**THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION No.17562 of 1998**

**Dated 03-12-2007**

Between:
The Depot Manager.

**..... PETITIONER**

AND

V.M.Goud & another.

**.....RESPONDENTS**

**THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION No.17562 of 1998**

**O R D E R:**

Another unfortunate case of a person being hit by an A.P.S.R.T.C. bus resulting in his death.

The first respondent, a driver with the petitioner-Corporation, while driving bus No.AP9Z 754 from Bangalore to Hyderabad, hit a bullock cart coming in the opposite direction at 02.30 hrs., on 07-09-1992 near Telangwadi village resulting in the death of the driver of the bullock cart and one of the bullocks and injuring the second bullock as well as another person sitting in the bullock cart. While the bullock cart broke into pieces, the bus was also damaged. On the basis of a report dated 16-10-1992, submitted by the Deputy Superintendent Traffic and the Joint Accident Committee, a charge sheet dated 24-04-1993 was issued to the first respondent wherein he was charged of having driven the vehicle in a rash and negligent manner. An enquiry was held and, on the first respondent being held guilty of the charges, a show cause notice, enclosing a copy of the enquiry report, was issued and on receipt of the objections from the first respondent, an order of removal was passed on 18-03-1994. The appeal preferred by the first respondent was rejected by the Divisional Manager, R.R.Division on 16-06-1994 and the review preferred to the Regional Manager, R.R.Division was also rejected on 23-11-1994.

Aggrieved thereby, the first respondent invoked the jurisdiction of the Labour Court-I, Hyderabad under
Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') by way of I.D.No.157 of 1995. While no oral evidence was adduced on behalf of both the parties, Ex.W.1, Xerox copy of the

judgment in C.C.No.218 of 1992 on the file of the Judicial Magistrate of First Class, Dhone, was filed on behalf of the workman and Exs.M.1 to M.24 were filed on behalf of the petitioner-Corporation.

The Labour Court relied on the judgment of the Judicial Magistrate of First Class, Dhone, in C.C.No.218 of 1992, wherein it was held that, since the accident took place on National High way No.7, speed alone was not the criterion for deciding whether there was rash and negligent driving on the part of the driver, that express buses were intended to be driven at a high speed, that the relationship between rashness and negligence depended on two factors viz. place and time and since, admittedly, the offence had occurred at about 02.30 A.M. on the National High Way and, in the absence of any obstruction from any vehicle or pedestrian, it could not be said that the bus was driven at high speed nor that it amounted to rash and negligent driving. The Judicial Magistrate of First Class, Dhone, while holding that the bus was driven at high speed, however, observed that the prosecution had failed to prove rash and negligent driving beyond reasonable doubt. The trial Court relied on Ex.M.1, statistical return, to hold that the bullock cart came on the wrong side of the road resulting in the accident. The Labour Court relied on Ex.M.10 explanation to hold that the first respondent was driving the vehicle on the left side of the road, that the road was very clear, that while he was driving the vehicle at normal speed and was passing by the side of stationary lorry, the bullock cart came to the left side of the road and dashed against the bus. The first respondent-workman contended that the accident had taken place due to the driver of the bullock cart suddenly swerving to the left side of the road.

The Labour Court examined Ex.M.5 sketch of the scene of offence which showed that the width of road was 24 feet with 8 feet road margin on either side to hold that the accident had taken place on the extreme left side of the road and that the bus had gone

beyond the tar road upto a distance of 1 feet on the front side whereas the back portion was still on the tar road. The Labour Court observed that the bullock cart was clearly on the left side of the road i.e. on the wrong side, that one bull was in the road margin at a distance of 16 feet from the front left tyre of the bus and that there were tyre marks of the bullock cart upto a distance of 12 feet pushing the cart to its left side. The Labour Court observed that no skid marks relating to the bus were found. From a reading of Ex.M.5 the Labour Court observed that the bus was coming at ordinary speed, that the bullock cart itself came to the left side of the road and, inspite of the best efforts of the driver, the accident had taken place. The Labour Court noted that the enquiry officer had found that since the width of the road was 24 feet, there was sufficient space for the first respondent to go to the left side and avert the accident and that absence of the skid marks proved the case against him. The Labour Court held that the reasoning adopted by the enquiry officer for arriving at its conclusion was not proper. The Enquiry Officer concluded that there was no rash and negligent driving on the part of the first respondent and that the enquiry officer's findings were perverse. The Labour Court, while setting aside the order of removal, directed that the first respondent be reinstated into service with continuity of service and attendant benefits with full back wages. Aggrieved thereby, the petitioner-Corporation is before this Court.

A Perusal of Ex.M.5, sketch, would show that at the time of inspection, after the accident, the bus was 16 feet on the left side of the road and had gone into the road margin area for approximately 2 feet, that the bullock cart had been pushed backwards to a distance of 100 yards, that a dead bullock was lying at a distance of 26 feet from the bus in the middle of the road margin, that there were blood stains between the bus and the bullock cart and the fire wood which was on the bullock cart was strewn all over behind the bullock cart.

The finding of the Labour Court that absence of skid marks by the driver of the bus did not show rash and negligent driving is a finding, which, to say the least, is perverse. The very fact that there were skid marks of the bullock cart and absence of skid marks of the bus tyres would itself show that no attempt was made by the first respondent (bus driver) to apply breaks and, as a result, the bullock cart was pushed back resulting in the tyre marks of the bullock cart. The fact that the dead bullock was found in the margin of the road at a distance of 26 feet would itself show that the bus was driven at high speed. What ever be the side which the bullock cart was coming, the fact that the accident had taken place resulting in the death of the driver of the bullock cart and the dead bull being thrown to the road margin for a distance of 26 feet would itself show that no attempts were made by the first respondent (bus driver) and that the bus was driven in a rash and negligent manner. Both the trial Court and the Labour Court have laid stress on the fact that driving the bus at the high speed would not constitute rash and negligent driving. The accident which had occurred was not merely on account of the speed of the bus but was, as rightly held by the enquiry officer, because adequate precautions had not been taken by the driver of the bus to prevent collision either by taking the bus through the road margin or by applying breaks which would have been established if there had existed tyre marks of the bus.

It is true that this Court, under Article 226 of the Constitution of India, would not sit in appeal over findings of fact recorded by the Industrial Tribunals/Labour Courts nor would it re-appreciate the evidence to come to a conclusion different from that of the Labour Court. It is only when the findings are perverse would interference, under Article 226 of the Constitution of India, be justified. The findings of the Labour Court that the first respondent had not driven the bus in a rash and negligent manner is clearly perverse as the evidence in the form of sketch report in Ex.M.5 would itself establish

that the bus was driven in a rash and negligent manner.

While acquittal in a criminal case would also be a factor which the Labour Court is required to take into consideration, it is also required to examine the material evidence on record in arriving at its findings and not be swayed by the findings of the trial Court alone. In the case on hand, while the petitioner-Corporation had marked Exs.M.1 to M.24, the Labour Court had relied solely on the findings of the criminal Court in holding that the prosecution had failed to prove that the first respondent (driver of the bus) had driven the bus in a rash and negligent manner.

Further, as held by the Supreme Court in **General Manager, Vijaya Bank v. Pramod Kumar Gupta**[1] and **J.K.Synthetics Ltd v. K.P.Agrawal**[2], the Labour Court ought not to have granted back wages as a matter of course and was required to take several other factors into consideration before awarding back wages. Since the Labour Court has failed to take into consideration all the documents in arriving at its findings and in as much as it has also not examined the several factors required to be considered before awarding back wages, the impugned award is quashed and the matter is remanded back to the Labour Court for its consideration afresh on merits and in accordance with law.

Since the dispute relates to the year 1995, and more than 12 years has elapsed since then, I consider it appropriate to direct the Labour Court to reconsider the entire matter and pass an award, in accordance with law, within a period of four months from the date of receipt of a copy of this order.

The Writ Petition is accordingly allowed. However, in the circumstances, without costs.

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03-12-2007

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[1] 2006(7) SCC 379
[2] 2007(2) SCC 433